

Response Accompanying RCE
Serial No. 10/072,503
Page 7

Amendments to the Drawings:

No amendments are made to the Drawings herein.

Remarks

By the foregoing Amendment, Claims 1, 21, 23 and 24 are amended. Applicant respectfully submits that no new matter was added by the amendment. Support for the element concerning a delivery analysis software module 70, including route optimization software, by which the dealer optimizes its deliveries to customer storage locations based upon storage levels at the customer storage locations, can be found, among other places, at Paragraphs [0063] and [0064] of the application as originally filed. Entry of the amendment and favorable consideration thereof is earnestly requested.

All claims stand rejected either under 35 U.S.C. 102(e) as being anticipated by, or under 35 U.S.C. 103(a) as being obvious over, Salvo et al. (U.S. Patent No. 6,341,271). Applicant respectfully asks the Examiner to reconsider these rejections in view of the above Amendments and the below Remarks.

The present invention is directed to a fuel tank monitoring system and automated inventory management system for fuel dealers. The present system allows the fuel dealers to view the amount of fuel that is remaining in their customers' tanks remotely, and then to optimize their schedules of deliveries of fuel to customers based upon the amount of fuel in the tanks. Currently, dealers estimate the amount of fuel remaining by using a "degree-day" estimation. This estimation uses the history of the temperature over a given period of time to calculate an estimated amount of fuel used, and thereby estimate when fuel deliveries are necessary. These predictions are not very accurate and, as a result, fuel dealers deliver product to their customers more often than they would otherwise have to with real data. Making delivery decisions based on real fuel level data allows the dealers to increase delivery efficiency and reduce their delivery fleets because fuel is only provided to customers with tank levels below a threshold level, as opposed to basing delivery decisions on crude estimated fuel consumption data.

Thus, the present invention, as claimed, is focused on the fuel dealer (as opposed to the customer) and on allowing the fuel dealer to optimize its delivery schedule, thereby reducing delivery costs incurred by the fuel dealer. In order to highlight this important aspect of the present invention, all claims have been amended to require, among other elements, a delivery analysis software module including route optimization software, by which the dealer optimizes its schedule of deliveries to customer storage locations based upon storage levels at the customer storage locations. Applicant respectfully submits that these highlighted elements are not disclosed, taught or suggested by the cited prior art, or any other prior art of which Applicant is aware.

Salvo et al. is directed to an inventory management system which automatically monitors inventory amounts, provides information concerning inventory, and decides if an order for replacement inventory should be placed. The system includes a storage for inventory, an indicator for monitoring and reporting the level of current inventory, and a controller for receiving information from different inventory suppliers and for integrating such information with information on current inventory amounts and estimated future use to decide if an order for replacing inventory should be made. However, all decisions concerning whether an order should be placed are based upon an analysis of what is best (i.e., least expensive) for the customer. There is absolutely no disclosure, teaching or suggestion of route optimization software, by which the dealer optimizes its schedule of deliveries to customer storage locations based upon storage levels at the customer storage locations.

Moreover, Applicant respectfully submits that it would not have been obvious to one skilled in the art to have modified Salvo et al. to include the missing claim limitations. It is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). It is also well settled that if the proposed modification would

render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the present case, Applicant respectfully submits that, as mentioned above, Salvo et al. is solely concerned with optimizing deliveries received by a customer (i.e., with minimizing the cost to the customer of such deliveries). As such, there would be absolutely no motivation for one skilled in the art to modify the system disclosed therein so as to include route optimization software, by which the dealer optimizes its schedule of deliveries.

Moreover, modifying Salvo et al. to arrive at the present invention would actually render the system disclosed therein unsuitable for its intended purpose in a great many situations. This is true because the best interests of the customer (with which Salvo et al. is concerned) is often at odds with the best interests of the fuel dealer (with which the present invention is concerned). For example, suppose that on January 1, 2006, the customer has 1/2 tank of fuel, but the price for fuel is extremely low. The system of Salvo et al. may determine (because of the low cost of fuel) to place a fuel order even though 1/2 tank remains. In this situation, a fuel delivery may be beneficial for the customer because of the low cost of fuel. However, delivering fuel to the customer when the customer still has 1/2 tank is not optimal from the standpoint of the fuel dealer (regardless of the cost of the fuel). Thus, the system of the present invention, which as claimed, includes route optimization software, by which the dealer optimizes its schedule of deliveries, likely would not have scheduled a delivery on January 1, 2006. Instead, the system of the present invention may have waited, for example, until February 1, 2006, when the customer had 1/8 tank of fuel remaining, to schedule a delivery. At this time, the price of fuel may have increased significantly, such that the delay in scheduling the fuel delivery would not have been optimal from the customer's standpoint, even though the delay was optimal from the fuel dealer's standpoint because it was thereby able to reduce its number of fuel deliveries per year, for example. As such, if Salvo et al. had been modified to arrive at the present invention

(i.e., by being modified to include route optimization software, by which the dealer optimizes its schedule of deliveries), it would have been unsuitable for its intended purpose (i.e., optimizing fuel deliveries from the customer's standpoint).

For the foregoing reasons, Applicant respectfully submits that Salvo et al. does not anticipate or render obvious the present invention, as claimed.

In view of the above, it is respectfully submitted that claims 1 – 10 and 21 – 28, all of the claims remaining in the application, are in order for allowance and early notice to that effect is respectfully requested.

Respectfully submitted,



Gene S. Winter, Registration No. 28,352
Todd M. Oberdick, Registration No. 44,268
Steven B. Simonis, Registration No. 54,449
Attorneys for Applicants
ST. ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155